REMARKS

The application includes claims 1-20 prior to entering this amendment.

The application remains with claims 1-20 after entering this amendment.

No new subject matter has been added. Reconsideration is respectfully requested.

Claim Rejections

Claims 1-4, 7, 8, 10-15, and 18 were rejected under 35 U.S.C. § 102(e) as being unpatentable over Adhikari, *et al.* (U.S. Patent Application Publication 2004/0252646). Claims 5, 16, and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Adhikari in view of Sagfors (U.S. Patent Application Publication 2004/0218617). Claims 9 and 17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Adhikari in view of Partain, *et al.* (U.S. Patent 7,068,607). Claims 6 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Adhikari in view of Sagfors as applied to claim 5 above, and further in view of Partain.

The rejections are respectfully traversed. However, some claims have been amended to further clarify the patentable subject matter.

Claim 1 now recites:

conducting an initial media call signaling session for establishing a media call and setting up the media path over the packet switched network, the media path established by successful completion of the initial media call signaling setup session and used for receiving or transmitting media packets containing media payloads;

sending and/or receiving one or more no-op media payload packets over the media path during and within the initial media call signaling session prior to establishing the media call and setting up the media path, the no-op media payload packets formatted as though the media packets contain media payloads but that do not contain media payloads;

requesting or receiving media path quality information associated with the no-op media payload packets during the initial media call signaling session prior to establishment of the media call being established by the initial media call signaling session; and

selectively completing or terminating the initial media call signaling session according to the information obtained from the transmission of the no-op media payload packet during the

initial media call signaling session, successful completion of the initial media call signaling session enabling subsequent transmission or playing out of media packets containing media payloads over the media path.

There is no suggestion in Adhikari of *sending and/or receiving a one or more no-op media payload packets over the media path during and within the initial media call signaling session prior to establishing the media call and setting up the media path* as recited in claim 1. Adhikari never sends no-op media payload packets, or any other media payload packets, during an initial media call signaling session *for establishing a media call and setting up the media path over the packet switched network* as recited in claim 1.

Adhikari does describe one or more endpoints devices that generate test communications in the form of synthesized calls. But the synthesized calls in Adhikari are not configured for use in placing actual calls (page 3, paragraph [0041]). When generating a synthetic call, the originating endpoint device performs a call setup process to set up the call with a specificed destination endpoint device. After the synthetic call is set up, RTP packets are sent with a predetermined payload (page 4, paragraph [0056]).

The media packets for the synthetic calls in Adhikari are sent after the signaling session has already set up the media path for a call (page 4, [0056], not during and within the signaling session that sets up the media path as recited in claim 1. Thus, there are never media payload packets of any kind in Adhikari sent during a call signaling session.

As also explained in Adhikari, the QoS measurements are collected for the call traffic during the call, not prior to establishment of the call during and within the signaling session as recited in claim 1.

Adhikari also does not send no-op media payload packets formatted as media packets that contain media payloads but that do not contain media payloads as also recited in claim 1. Adhikari does send synthesized calls but explains that the synthetic calls contain streams of data traffic (page 5, [0078]). Also refer to FIG. 6 and paragraph [0105] where the other content field contains any other data to be transported, such as for example, a voice or video sample.

Accordingly, the synthetic calls in Adhikari contain media payloads and therefore teach away from no-op media payload packets that are formatted as if they contain media payloads but that do not actually contain media payloads as recited in claim 1.

Sagafor at paragraph 27, lines 1-8 describes a mechanism such as Random Early Detection (RED) that triggers the marking of data packets when a buffer queue starts to be full. The mechanism may add a tag to a packet forwarded to a receiver to notify the receiver that action should be taken to avoid congestion. The receiver may in turn notify the sender. Alternatively, a marked data packet or other notification may be returned directly to the sender.

However, there is no suggestion in Sagafor of any type of packets, much less no-op packets, that are *formatted as media packets that contain media payloads but that do not contain media payloads* as recited in claim 1. There is also no suggestion that the no-op packets in Sagafor are sent during a call signaling session that is used to establish a media path as recited in claim 1. As described above, Sagafor simply describes a scheme for dropping packets in a packet queue according to a defined queue threshold [0060-0063] and does not suggest any type of no-op packet testing during a signaling session as recited in claim 1.

Further, with respect to claim 5, nowhere does Sagafor ever suggest *setting a marker bit in the no-op media payload packet to initiate a receiver to immediately send back a media path analysis report*. Sagafor adds a tag to a packet forwarded to a receiver to notify the receiver that an action should be taken to avoid congestion, but the tag does not cause the receiver to then send an analysys report to the sender of the tagged packet [0027].

Partain describes an architecture for resource management of an IP-based cellular radio access network. Partain at col. 3, starting at line 36, determines a load status by sending a probe packet through a network from a first node to a second node. Partain at col. 5, lines 22-44 explains that the probe packets are traffic packets with a payload. Accordingly, the probe packets are not *no-op media payload packets formatted as media packets that contain media payloads but that do not contain media payloads* as recited in claim 1.

Also the probe packets in Partain are not sent during and within the signaling session used for establishing a media stream as recited in claim 1. Partian explains how a measurement proxy probes a network to determine the congestion state for the network (col. 7, lines 1-9). The congestion information is then sent to and compiled by a Bandwidth Broker (BB) (col. 7, lines 5-9.

FIG. 7 of Partian shows call set-up signaling conducted between a mobile station (MS) and a Base Transceiver Station or "base station" (BTS). However Partian specifically states: "At no point during the signing connection setup procedure is the BB involved, since the control

plan signaling connection uses a common transport resource in GSM. It is when the traffic channel (e.g., for speech) is established that the BB is queried." (col., 8, lines 52-56). Accordingly, Partian does not *send and/or receive one or more no-op media payload packets over the media path during and within the initial media call signaling session and prior to establishing the media call and setting up the media path* as recited in claim 1.

For the reasons stated above, claims 1-20 are patentable under 35 U.S.C. § 102(e) over Adhikari and patentable under 35 U.S.C. § 103(a) over Adhikari in view of Sagfors and Partain.

Independent claims 11 and 18 include at least some of the same elements as claim 1 and are therefore patentable for at least some of the same reasons.

Conclusion

For the foregoing reasons, the applicants request reconsideration and allowance of claims 1-16. The applicants encourage the examiner to telephone the undersigned if it appears that an interview would be helpful in advancing the case.

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Respectfully submitted,

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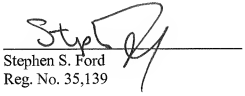

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